



The Institute of Chartered Accountants in England and Wales

ICAEW KW REG Workbook_3

Workbook

For exams in 2021

Financial Management

The Institute of Chartered Accountants in England and Wales

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Questions within the Workbook should be treated as preparation questions, providing you with a firm foundation before you attempt the exam-standard questions. The exam-standard questions are found in the Question Bank.

Welcome to ICAEW

I'd like to personally welcome you to ICAEW.

In a fast-changing and volatile world, the role of the accountancy profession has never been more important.

As an ICAEW Chartered Accountant, you will make decisions that will define the future of global business.

By choosing our world-leading chartered accountancy qualification, the ACA, you will acquire exceptional knowledge and skills - with technology and ethics at the heart of your learning. A focus on capabilities such as judgement and scepticism will enable you to make the right decisions in diverse and often complex environments.

You will be equipped to flourish and to lead in areas that are transforming the business landscape. This includes embracing technological change and harnessing digital disruption, to help our profession deliver greater value. It also includes putting climate change and sustainability at the heart of business strategy. We will equip you to be adaptable and agile in your work and all within a set of values fundamental to trust and transparency, which will set you apart from others.

Joining over 184,500 ICAEW Chartered Accountants and students worldwide, you are now part of a global community. This unique network of talented and diverse professionals work in the public interest to build economies that are sustainable, accountable and fair.

You are also joining a community of 1.8m chartered accountants and students as part of Chartered Accountants Worldwide - a family of leading institutes, of which we are a founder member.

ICAEW will support you through your studies and throughout your career: this is the start of a lifetime relationship, and we will be with you every step of the way to ensure you are ready to face the challenges of the global economy. Visit page [v](#) to review the key resources available as you study.

With our training, guidance and support, you will join our members in realising your career ambitions, developing world-leading insights and maintaining a competitive edge.

We will create a world of strong economies, together.

I wish you the best of luck with your studies.

Michael Izza

Chief Executive

ICAEW

Financial Management

If you are studying this exam as part of the ACA qualification go to icaew.com/examresources or if you are studying the ICAEW CFAB qualification go to icaew.com/cfabstudents.

Module aim

Financial Management enables students to recommend relevant options for financing a business, recognise and manage financial risks and make appropriate investment decisions.

On completion of this module, students will be able to:

- identify capital requirements of businesses, assess financing options and recommend relevant methods of financing;
- identify the financial risks facing a business and the principal methods of managing those risks; and
- apply appropriate investment appraisal techniques taking into account other factors affecting investment decisions.

Method of assessment

The Financial Management module exam is 2.5 hours long. The exam consists of three questions. Managing financial risk will be assessed as a discrete topic. The other two questions will assess financing options and investment decisions and valuation either as discrete or integrated topics.

Specification grid

This grid shows the relative weightings of subjects within this module and should guide the relative study time spent on each. Over time the marks available in the assessment will equate to the weightings below, while slight variations may occur in individual assessments to enable suitably rigorous questions to be set.

	Weighting (%)
1 Financing options	35
2 Managing financial risk	30
3 Investment decisions and valuation	35

Permitted texts

At the Professional and Advanced Levels there are specific texts that you are permitted to use during your exam. All information for these texts is available on icaew.com/permitteditexts.

Professional level exams	Permitted text
Audit and Assurance	✓
Financial Accounting and Reporting	✓
Tax Compliance	✓
Business Strategy and Technology	x
Financial Management	x
Business Planning	No restrictions

Advanced Level exams	
Corporate Reporting	No restrictions
Strategic Business Management	No restrictions
Case Study	No restrictions

The exams which have no restrictions include the following:

- Business Planning: Banking;
- Business Planning: Insurance;
- Business Planning: Taxation;
- Corporate Reporting;
- Strategic Business Management; and
- Case Study.

This information, as well as what to expect and what is and is not permitted in each exam is available in the Instructions to Candidates. You will be sent the instructions with your exam admission details. They can also be viewed on our website at icaew.com/exams.

Key resources

Whether you're studying the ACA qualification with an employer, at university, independently (self-studying), or as part of an apprenticeship, we provide a wide range of resources and services to help you in your studies.

Take a look at the online exam resources available to you on icaew.com/examresources and discover more resources and services at icaew.com/studentbenefits.

Syllabus, skills development and technical knowledge grids

This syllabus presents the learning outcomes for each exam and should be read in conjunction with the relevant technical knowledge grids and, where applicable, the skills development grids.

Exam support

A variety of exam resources and support have been developed on each exam to help you on your journey to exam success. This includes exam guidance, sample exams, hints and tips from examiners and tutors, on-demand webinars and articles.

Past exams and mark plans

Use past exams to practise answering questions. The mark plans will help you check your answers. The past exams and mark plans are included in your Question Bank and have been updated to reflect the 2021 legislation and syllabus.

Errata sheets

These documents will correct any omissions within the learning materials once they have been published. You should refer to them when studying.

Exam software

It is vital that you are familiar with the exam software before you take your exam. Access a variety of resources, including the practice software and sample exams at icaew.com/studentresources.

Student support team

Our student support team is here to help and advise you, so do not hesitate to get in touch. Email studentsupport@icaew.com or call +44 (0)1908 248 250. If you are browsing our website, look out for the live help boxes. You will be able to speak directly to an adviser. Mia, our ChatBot, is also on hand to answer your queries.

Online student community

The online student community is the place where you can post your questions and share your study tips. Join the conversation at icaew.com/studentcommunity.

ICAEW Quarterly and Student Insights

As an ACA student, you will also receive a copy of our member magazine, *Quarterly*. Read more at icaew.com/insights.

You'll also be able to access our practical and topical student content on our dedicated online student hub, Student Insights.

You'll find new-look features, interviews and guides giving you fresh insights, innovative ideas and an inside look at the lives and careers of our ICAEW students and members. No matter what stage you're at in your journey with us, you'll find content to suit you.

Tuition

The ICAEW Partner in Learning scheme recognises tuition providers who comply with our core principles of quality course delivery. If you are not receiving structured tuition and are interested in doing so, take a look at ICAEW recognised Partner in Learning tuition providers in your area at icaew.com/dashboard.

CABA

It can be tough juggling your studies with work, planning for the future and finding time to unwind. CABA are an independent charity that supports the well-being of the chartered accountant community. So, if you need support at home or at work, CABA is there for you. They provide information, advice and lifelong support to ACA students across the world face-to-face, over the phone and online. All their services are completely free and strictly confidential. Find out more at caba.org.uk.

ICAEW Business and Finance Professional (BFP)

ICAEW Business and Finance Professional (BFP) is an internationally recognised designation and professional status. It demonstrates your business knowledge, your commitment to professionalism and that you meet the standards of a membership organisation. Once you have completed the ICAEW CFAB qualification or the ACA Certificate Level, you are eligible to apply towards gaining BFP status. Start your application at icaew.com/becomeabfp.

Skills within the ACA

Professional skills are essential to accountancy and your development of them is embedded throughout the ACA qualification.

The level of competency required in each of the professional skills areas to pass each module exam increases as ACA trainees progress upwards through each Level of the ACA qualification. The skills progression embedded throughout the ACA qualification ensures ACA trainees develop the knowledge and professional skills necessary to successfully operate in the modern workplace and which are expected by today's forward-thinking employers.

The following professional skills areas are present throughout the ACA qualification.

Skill area	Overall objective
Assimilating and using information	Understand a business or accounting situation, prioritise by determining key drivers, issues and requirements and identify any relevant information.
Structuring problems and solutions	Structure information from various sources into suitable formats for analysis and provide creative and pragmatic solutions in a business environment.
Applying judgement	Apply professional scepticism and critical thinking to identify faults, gaps, inconsistencies and interactions from a range of relevant information sources and relate issues to a business environment.
Concluding, recommending and communicating	Apply technical knowledge, skills and experience to support reasoning and conclusion and formulate opinions, advice, plans, solutions, options and reservations based on valid evidence and communicate clearly in a manner suitable for the recipient.

The following provides further detail on the professional skills that you will develop in this particular module. To see the full skills development grids, please go to icaew.com/examresources.

Assimilating and using information

Understand the situation and the requirements

- Demonstrate understanding of the business context
- Recognise new and complex ideas within a scenario
- Identify the needs of customers and clients
- Explain different stakeholder perspectives and interests
- Identify risks within a scenario
- Identify elements of uncertainty within a scenario
- Identify ethical issues including public interest and sustainability issues within a scenario

Identify and use relevant information

- Interpret information provided in various formats
- Evaluate the relevance of information provided
- Use multiple information sources
- Filter information provided to identify critical facts

Identify and prioritise key issues and stay on task

- Identify business and financial issues from a scenario
- Prioritise key issues
- Work effectively within time constraints
- Operate to a brief in a given scenario

How skills are assessed: students may be required to:

- absorb and understand both structured and unstructured material; and

- give recommendations based on their understanding and interpretation of the information provided, supported by explanation of the reasoning behind and implications of their recommendations.

Structuring problems and solutions

Structure data

- Structure information from various sources into suitable formats for analysis
- Identify any information gaps
- Frame questions to clarify information
- Use a range of data types and sources to inform analysis and decision making
- Structure and analyse financial and non-financial data to enhance understanding of business issues and their underlying causes
- Present analysis in accordance with instructions and criteria

Develop solutions

- Identify and apply relevant technical knowledge and skills to analyse a specific problem
- Use structured information to identify evidence-based solutions
- Identify creative and pragmatic solutions in a business environment
- Identify opportunities to add value
- Identify and anticipate problems that may result from a decision
- Identify a range of possible solutions based on analysis
- Identify ethical dimensions of possible solutions
- Select appropriate courses of action using an ethical framework
- Identify the solution which is the best fit with acceptance criteria and objectives
- Define objectives and acceptance criteria for solutions

How skills are assessed: students may be required to:

- assimilate significant amounts of information, to analyse it (including quantitative analysis) in a way that demonstrates relevant technical knowledge and to draw and support appropriate conclusions.

Applying judgement

Apply professional scepticism and critical thinking

- Recognise bias and varying quality in data and evidence
- Identify assumptions or faults in arguments
- Identify gaps in evidence
- Identify inconsistencies and contradictory information
- Assess interaction of information from different sources
- Exercise ethical judgement

Relate issues to the environment

- Appreciate when more expert help is required
- Identify related issues in scenarios
- Assess different stakeholder perspectives when evaluating options
- Retain an overview of the business issue or scenario
- Appraise corporate responsibility and sustainability issues
- Appraise the effects of alternative future scenarios
- Appraise ethical, public interest and regulatory issues

How skills are assessed: students may be required to:

- make sense of relatively large volumes of data, making judgments on the relevance of data for use in subsequent calculations and discussions;
- reflect on their calculations and the methodology employed and to identify and discuss the implications of calculations; and

- make and justify judgements based on earlier calculations.

Concluding, recommending and communicating

Conclusions

- Apply technical knowledge to support reasoning and conclusions
- Apply professional experience and evidence to support reasoning
- Use valid and different technical skills to formulate opinions, advice, plans, solutions, options and reservations

Recommendations

- Present recommendations in accordance with instructions and defined criteria
- Make recommendations in situations where risks and uncertainty exist
- Formulate opinions, advice, recommendations, plans, solutions, options and reservations based on valid evidence
- Make evidence-based recommendations which can be justified by reference to supporting data and other information
- Develop recommendations which combine different technical skills in a practical situation

Communication

- Present a basic or routine memorandum or briefing note in writing in a clear and concise style
- Present analysis and recommendations in accordance with instructions
- Communicate clearly to a specialist or non-specialist audience in a manner suitable for the recipient
- Prepare the advice, report, or notes required in a clear and concise style

How skills are assessed: students may be required to:

- recommend suitable courses of action in a given situation (financing decisions, dividend decisions, investment appraisal decisions); and
- incorporate advice within a 'business report' format, addressing both the strengths and weaknesses of any recommendations and/or reasons for the rejection of alternatives.

To help you develop your ability to demonstrate competency in each professional skills area, each chapter of this Workbook includes up to four Professional Skills Guidance points.

Each Professional Skills Guidance point focuses on one of the four ACA Professional Skills areas and explains how to demonstrate a particular aspect of that professional skill relevant to the topic being studied. You are advised to refer back to the Professional Skills Guidance points while revisiting specific topics and during question practice.

Chapter 1



Companies: the consequences of incorporation

Introduction

Learning outcomes

Syllabus links

Assessment context

Chapter Study Guidance

Learning topics

- 1 Characteristics of a company
- 2 Types of company
- 3 Formation of a company
- 4 A company's name
- 5 Articles of association
- 6 Administrative consequences of incorporation
- 7 Accounts and audit requirements

Summary

Self-test questions

Further Question Practice

Technical References

Answers to Interactive questions

Answers to Self-test questions



Introduction

Learning outcomes

- Identify the differences between unincorporated businesses (sole traderships and partnerships), limited liability partnerships and companies, show the advantages and disadvantages of incorporation and recognise the circumstances when the veil of incorporation can be lifted
- Identify the procedures required to form a registered company or a limited liability partnership, including any practical considerations, and the nature and contractual force of a company's memorandum and articles of association and identify the advantages and disadvantages of off-the-shelf companies
- Identify the administrative consequences of incorporation or the formation of a limited liability partnership including requirements regarding statutory books, accounts, meetings and the role of the company secretary
- Identify the requirements of the Companies Act 2006 in respect of companies' statutory accounts and audit, including the exemptions for small and medium-sized companies and micro-entities

Specific syllabus references for this chapter are: 2a, b, c, e.

Syllabus links

As companies are fundamental in the business world, this chapter is relevant to most papers in your syllabus. Elsewhere, you will study the audit of companies, corporation tax, financial companies, managing companies and preparing company accounts, for example.

Assessment context

A large proportion of your assessment will relate to company law, as set out in this chapter and Chapters 6, 7 and 8. You might expect around 12 questions to address the areas covered by this chapter. Questions on the topics in this chapter will be set as multiple choice, multi-part multiple choice or multiple-response questions. Some questions may involve an analysis of a brief scenario and the identification of an appropriate response, which may be in the form of providing advice.

Chapter Study Guidance

Use this schedule and your study timetable to plan the dates on which you will complete your study of this chapter.

Topic	Practical significance	Study approach	Exam approach	Interactive questions
1	Characteristics of a company This chapter sees the start of your study of company law, the rules that govern how business are run. The key characteristic of a company, that of separate legal personality, underlies the principle of limited liability to members of a company.	Approach Focus on legal personality and how it feeds into the limited liability of members. You also need to understand the circumstances where the veil of incorporation can be lifted. Stop and think What is the principle of legal	You might be required to identify situations in a scenario where the veil of incorporation will be lifted.	IQ1 Lifting the corporate veil This question helps you to identify whether the veil of incorporation will be lifted in a given situation.

Topic	Practical significance	Study approach	Exam approach	Interactive questions
		personality? When will the veil of incorporation be lifted?		
2	Types of company The choice of corporate form is a key practical consideration for all businesses.	Approach Focus on the different types of company and in particular, the differences between public and private companies. Stop and think What are the differences between public and private companies in terms of number of directors and deadlines for filing accounts?	The differences between private and public companies could easily be tested in a knowledge question. Scenario questions may ask you to recommend a particular type of company in a given situation.	IQ2 Types of company This question tests your ability to recommend a particular type of company in a scenario.
3	Formation of a company To form a company requires a registration procedure to be followed or an off-the-shelf company to be purchased.	Approach Learn the different documents that are needed to form a company. You also need to understand the role of promoters and pre-incorporation contracts. Make sure that you can explain the benefits of buying an off-the-shelf company. Stop and think When is a promoter liable on a pre-incorporation contract?	Knowledge questions may test your knowledge of the registration documents. Scenario questions may test the liability of promoters.	IQ3 Pre-incorporation contracts The question helps you to understand the liability of promoters for pre-incorporation contracts.
4	A company's name	Approach	Knowledge questions could test your	IQ 4 Formation of

Topic	Practical significance	Study approach	Exam approach	Interactive questions
	Company's cannot choose any name they wish. There are a number of rules that control what a company can be called.	Learn the restrictions on company names and how a company name can be changed. Stop and think? How can a company change its name?	understanding of what company names are and are not permitted.	company This question tests your memory of the documents needed to register a company.
5	Articles of association Every company needs to have rules that govern how it is run. These are known as articles of association.	Approach Focus on how the articles form a contract between the company and its members, but not third parties. It is also important to know what model articles are and how a set of articles can be amended. Stop and think Name the parties that are bound by articles of association. How does a company alter its articles?	Knowledge questions may test the type of resolution required to amend a company's articles. A scenario question could require you to identify whether certain parties are bound by them.	
6	Administrative consequences of incorporation Part of the price paid for limited liability is the requirement for companies to keep and return to the Registrar of Companies certain records. This role is often performed by a company secretary, but not all companies are required to have one.	Approach You need to learn the names of all the records a company is required to keep and what records are maintained by the Registrar. You also need to appreciate the importance of a confirmation statement and the rules on appointment and authority of a company secretary. Stop and think	A scenario question may examine whether contracts entered into by a company secretary had the required authority. There is a link here to the rules of agency.	

Topic	Practical significance	Study approach	Exam approach	Interactive questions
		Can you name five records a company is required to keep? What details does a confirmation statement contain? Who may act as a company secretary?		
7	Accounts and audit requirements This section on the legal rules relating to accounts and audit is of great significance to an accountant.	Approach Learn the details of the documents that make up an organisation's accounting records. You should ensure that you know the relevant publication dates for private and public companies as well as the criteria for companies be classified as micro, small and medium. You also need to understand which companies are exempt from an audit. Stop and think What information is contained in a Directors' report? What criteria must be met for a company to be classified as small? What percentage of members of an exempt company can require an audit be conducted?	All of the detailed rules in this section could easily be tested in a knowledge question. For example, you may be required to identify a company as being micro, small or medium.	

Once you have worked through this guidance you are ready to attempt the further question practice included at the end of this chapter.

1 Characteristics of a company



Section overview

- A company has a separate legal identity from its members and is, in law, a person in its own right. This is one of the fundamental cornerstones of company law.
- The liability of the members of a company for the debts of the company may be limited. The liability of the company itself is always unlimited.
- The 'veil of incorporation' said to be drawn between the company and its members may be lifted in certain circumstances.

For the purposes of this study manual, a **company** is an entity registered under the **Companies Act 2006** (TSO, 2006) ('CA'06') or any earlier Companies Act. References to 'the Act' are to the Companies Act 2006 unless otherwise stated.

The single largest piece of legislation ever made, the CA'06 is intended to be a comprehensive code of company law, restating and replacing most of the relevant companies legislation that went before it (principally the Companies Acts 1985 and 1989) and also introducing new law. Many of the changes in law were designed to lighten the regulatory and bureaucratic burden on companies (simplifying decision-making processes and capital maintenance provisions, for example), although it remains to be seen whether the burden may actually be increased in some areas, such as communication with nominated holders and the new duty on directors to promote the success of the company (which could lead to differences in the way they conduct their business).

References to 'the Act' are to this statute and section numbers are given for ease of reference only (the assessment will not require you to know section numbers).

2.1 Legal personality

A person possesses legal rights and is subject to legal obligations. In law, the term 'person' is used to denote either a **natural person** (ie, an individual human being) or an **artificial person** (including companies).

It is a fundamental legal principle that a company is a **legal entity**, separate and distinct from its members. One of the consequences of applying this principle is that the liability of the company's members (not the company itself) for the debts and other liabilities of the company can be limited. It also follows that the property of a company belongs to that company, debts of the company must be satisfied from the assets of that company and the company continues in existence (despite any change in its membership) until such time as it is wound up or otherwise removed from the register.

The first case that clearly demonstrated the separate legal personality of companies is of great significance to any study of company law and is therefore set out in some detail below.

Salomon v Salomon & Co Ltd 1897

The facts: The claimant, Salomon, had carried on business as a leather merchant and boot manufacturer for 30 years. He decided to form a limited company to purchase the business with, he and six members of his family each subscribing for one share. The company then purchased the business from Salomon for £38,782, the purchase price being by way of the issue of 20,000 £1 shares, the issue of debentures for £10,000 (effectively making Salomon a secured creditor) and the balance in cash. The company did not prosper and was wound up a year later, at which point its liabilities exceeded its assets. The liquidator, representing unsecured trade creditors of the company, claimed that the company's business was in effect still the claimant's (since he owned all but six of the issued shares), that he should bear liability for its debts and that payment of the debenture debt to him should be postponed until the company's trade creditors had been paid.

Decision: The Court of Appeal held that since the other shareholders were 'mere puppets' and that the company had been irregularly incorporated, Salomon should indemnify the company against its liabilities. The House of Lords however held that the business was owned by, and its debts were liabilities of, the company. The claimant was under no liability to the company or its creditors, his

debentures were validly issued and the security created by them over the company's assets was effective. This was because once the company had been found to have been formed in compliance with the formal procedures set out in the Companies Act, the company was regarded as a legal entity in its own right, notwithstanding the dominant position of Salomon within the company.

2.2 Liability

As mentioned above, one of the key consequences of the fact that the company is distinct from its members is that its members may enjoy **limited liability**. This means that, in the event of business failure, the members will only be asked to contribute identifiable amounts to the assets of the business, even though they are, essentially, the ones who **own** the business. Not surprisingly, most companies are registered with limited liability. The amount members will be asked to contribute will be any amount that is unpaid on their shares (including any premium). This means that their total liability is the value of the share capital that they own.

However, some lenders may require directors and/or members to agree to repay a loan out of their personal wealth should the company default on the debt. This is known as requesting a **personal guarantee**, which is a promise by a person (the directors or shareholders) to assume a debt obligation in the event of non-payment by the borrower (the company). Personal guarantees are a means of protecting the lender by preventing the shareholders/members from hiding behind the protection of limited liability. It is commonly used where the lender is very powerful (such as a bank) and the borrower has no other source of funds available to it (such as a new or small company).

It is important that you understand that the company itself, on the other hand, is **liable without limit for its own debts**. In an **unlimited company**, there is no limit on the company's or the members' liability. Thus, the question of limited liability is important when a **limited** company is unable to satisfy all its debts. The amounts that members may be required to pay, in the event of a winding up, depend upon the type of limited company, as follows:

Type of company	Amount owed by member at winding up
Company limited by shares	Any outstanding amount of the nominal value of any share which has not been paid either by the original or a subsequent holder of the shares. If the member's shares are fully paid, there is no further liability to contribute. Any premium (over the nominal value) that was agreed to be paid for the share will also be owed to the extent that it has not been paid, unless the shareholder at the time is not the original shareholder (since the amount of premium is a debt that does not pass with the shares).
Company limited by guarantee	The amount they guaranteed to pay in the event of a winding up.

A company, as a separate legal entity, may also have liabilities in tort and crime. However, it is currently extremely difficult to prosecute a company successfully for a criminal offence.

2.3 Veil of incorporation

As a result of the law stated in Salomon's case, a **'veil of incorporation'** is said to be drawn between the members and the company, separating them for the purposes of liability and identification. This often results in protecting the members from the consequences of the company's actions, as you will see below. Occasionally the separate legal personality symbolised by the veil can be problematic as where, for example, an individual incorporated their business but insured the company's property in their own name rather than that of the company. When the property was destroyed by fire, it was held that they had no insurable interest (either as creditor or member) and that the company, as a separate legal entity, should have insured its own assets (*Macaura v Northern Assurance Co Ltd* 1925).

A rigid application of the principle of separate legal personality can sometimes produce harsh or inequitable results and so the law sometimes 'lifts the veil' in order to expose the commercial reality of the situation.

Generally speaking, this may be done by the courts in order to defeat fraud, sharp practices or illegality, although it is difficult to define a set of consistent principles underlying the cases. Examples

of where the veil has been lifted by the courts are given below in order to give you a general understanding of the courts' approach. You will not be assessed on your recollection of each case.

COURTS	
Situation where the veil might be lifted	Examples
Groups of companies - where the subsidiary can be regarded as the agent of the holding company	
<ul style="list-style-type: none"> To produce tax liability 	<i>Firestone Tyre & Rubber Co Ltd v Lewellin 1957</i> : English subsidiary (S) deemed to be agent of American holding company (H) (thus rendering H liable to UK tax) where H entered into agreement with distributors under which the distributors should place orders with H, to be carried out by S. In fact, S received orders direct, handled business completely (free from control of H) and forwarded money (less a percentage) to it.
<ul style="list-style-type: none"> To give entitlement to compensation 	<i>Smith, Stone & Knight Ltd v Birmingham Corporation 1939</i> : Compensation for compulsorily-acquired premises was payable to an owner-occupier (H in this case) but not a tenant-occupier (S). Held that S occupied the premises as an agent of H since it was wholly-owned and the directors of H and S were the same.
<ul style="list-style-type: none"> To prevent evasion of excise duty 	<i>Re H and others 1996</i> : Where evasions were alleged to have been committed by H, the court also allowed restraint of S's assets, refusing to recognise the companies as separate.
It is important to note, however, that cases such as these do not mean that groups of companies will generally be regarded as a single entity. There are numerous examples of where the courts have refused to lift the veil between companies within a group, including cases where creditors of an insolvent subsidiary are not paid in full even though the holding company remains solvent or where a claimant proceeds against a subsidiary company that is not as asset-rich as its holding company.	
To reveal true national identity and expose illegality	<i>Daimler Co Ltd v Continental Tyre & Rubber Co (GB) Ltd 1916</i> : A company was registered and had its registered office in England. However, since all of its members with control of the company (except one) were German, the veil could be lifted to expose the company as an enemy alien. Therefore trading with this company was against the law (in wartime). (See too <i>Re F G Films</i> below.)
Quasi-partnership	<i>Ebrahimi v Westbourne Galleries 1972</i> : In this case, the courts lifted the veil to reveal a company so completely in the nature of a partnership, that a winding-up of the company could be ordered on the grounds of it being just and equitable, because one of the directors being excluded from the management of the company represented a complete breakdown in the management of the company just, as it would be unlawful in a partnership.
Where a company is a sham	<ul style="list-style-type: none">

COURTS	
Situation where the veil might be lifted	Examples
<ul style="list-style-type: none"> To prevent an evasion of obligations 	<i>Gilford Motor Co Ltd v Horne 1933</i> : An employee was contractually bound not to solicit customers from his ex-employer after leaving its service. In order to get round this, he formed a company and carried on his work, soliciting his ex-employer's customers in the process. The veil was lifted to reveal his company as a 'mere cloak or sham' and an injunction was granted against it and the employee.
<ul style="list-style-type: none"> To reveal national identity 	<i>Re F G Films Ltd 1953</i> : An English company was formed to make an English film. In fact the staff and finance were American, the film was produced in India and there were neither premises nor employees in England. The veil was lifted to expose a 'sham' company with the result that the marketing and other advantages available to British films were not available in this case.

In addition to the courts sometimes exercising their discretion to lift the veil, **legislation** can also provide for the veil to be lifted, usually in order to confer a personal liability on those who run a company for breach of obligations imposed on the company. You should note that the following examples are only legitimate illustrations of the veil being lifted if the directors or others (upon whom liability is imposed) are also members of the company:

STATUTE	
Situation where veil might be lifted	Explanation
Where director is disqualified (Company Directors Disqualification Act 1986 (HMSO, 1986))	Directors who participate in the management of a company in contravention of an order under the Company Directors Disqualification Act 1986 will be jointly or severally liable along with the company for the company's debts.
Fraudulent and wrongful trading (Insolvency Act 1986 (HMSO, 1986))	Where a company is being wound up: <ul style="list-style-type: none"> all persons who are knowingly parties to carrying on business with the intent of defrauding creditors or for some other fraudulent purpose (fraudulent trading); and directors who carry on business when they knew or should have known that the company would not avoid insolvent liquidation (wrongful trading) can be held personally liable to make such contribution to the company's assets as the court thinks fit.
Trading without a trading certificate (s.767)	A public company must obtain a certificate from the Registrar before it commences to trade. Failure to do so leads to personal liability for the directors for any loss or damage suffered by a third party to a transaction entered into by the company in contravention of this section.



Interactive question 1: Lifting the corporate veil

Following the collapse of Forest Ferns Ltd, Sandy is disqualified from being a director for five years. However, after three years, he sets up a company, Beach Holidays Ltd, of which he is a director and

95% shareholder. As a result of a terrorist attack on a passenger jet from Heathrow, the overseas holiday market collapses and Beach Holidays Ltd goes into insolvent liquidation.

Which of the following best describes the legal position?

- A Beach Holidays Ltd is a separate legal personality and is therefore solely responsible for its debts.
- B Sandy is liable for Beach Holidays Ltd's debts as a 95% shareholder and the veil will be lifted to reveal the company as a sham, designed to conceal a sole proprietor's business.
- C The veil will be lifted on a statutory basis because Sandy is disqualified and he will be solely liable for the debts of Beach Holidays Ltd.
- D The veil will be lifted because Sandy was acting while disqualified and both he and Beach Holidays Ltd will be liable for the debts on a joint and several basis.

See **Answer** at the end of this chapter.

Applying the rules of lifting the veil of incorporation in an assessment question requires you to use your judgment to decide whether or not any of the situations where the veil can be lifted can be applied.

3 Types of company



Section overview

- Public companies are companies limited by shares and registered as public companies.
- Private companies may be unlimited, or limited by shares or guarantee.
- Public companies may re-register as private and vice versa.
- Limited companies may re-register as unlimited and vice versa.

4.1 Limited and unlimited companies

The liability of the members of a company may be limited or unlimited (s.3) as follows:

Liability	Description
Limited by shares (public or private)	Liability is limited to the amount of the nominal value, if any, unpaid on members' shares held by them (including any premium payable by the current owner in respect of them).
Limited by guarantee (private only)	Liability is limited to such amount as the members undertake to contribute to the company's assets in the event of it being wound up. A company limited by guarantee cannot be registered with a share capital. A company limited by guarantee is often a charity or trade association, ie, a non-commercial organisation that aims to keep income and expenditure in balance but has the members' guarantee as a form of reserve capital in case of insolvency.
Unlimited (private only)	There is no limit on the members' liability. They can be compelled to contribute as much as may be necessary to pay the company's debts in full.

Liability	Description
	An unlimited company does not need to file annual accounts, subject to certain conditions (for example, that it is not a subsidiary or a parent of a limited company (s.448)).

A company may alter its status **once**, as follows (ss.102–111):

- **Limited to unlimited:** with the consent of **all members** of the company
- **Unlimited to limited:** by passing a **special resolution** to that effect and specifying whether the company is to be limited by shares or guarantee

In each case, the company must make any necessary changes to its name and articles and apply, with appropriate documentation, to the Registrar of Companies.

A company limited by shares may not re-register as a company limited by guarantee, and vice versa.

4.2 Public and private companies

A **public company** is a limited company expressly registered as a public company under the Act. Only a small proportion of companies are public companies.

A **private company** is any registered company (limited or unlimited) that is not stated to be a public limited company. Most private companies are small to medium enterprises in which some, if not all, shareholders are the directors.

The principal differences are that a public company is subject to more stringent rules and regulation than private companies and that only a public company can offer its securities to the public. The principal features of public and private companies can be summarised in the following table (at the same time illustrating the differences between them).

Feature	Public	Private
Liability	Must be limited.	May be limited or unlimited.
Share capital	Subject to authorised minimum (currently £50,000).	No minimum.
Ability to commence trading	Must have trading certificate before it can commence trading (s.761).	May commence trading once incorporated.
Public offers	Can offer its securities to the public (and may obtain a listing from the stock exchange or other investment exchange).	Prohibited from offering its securities to the public (s.755).
Name	Must end with 'public limited company' or 'plc' (or Welsh equivalent) (s.58).	Must end with 'limited' or 'Ltd' (or Welsh equivalent) although certain companies (including charities) may be exempt from this requirement (ss.59–62).
Loans etc	Loans to persons connected with directors and quasi-loans and credit transactions to directors or connected persons need members' approval (ss.198–202).	These rules do not apply (unless the company is associated with a public company). Only loans made directly to directors need members' approval.
Directors	Must have at least two directors (s.154).	Must have at least one.
Company Secretary	Must have one (s.271).	Need not have one (s.270).
Written resolutions	Not applicable.	May pass written resolutions instead of calling meetings

Feature	Public	Private
		(s.288).
AGMs	Must hold AGM (s.336).	Need not hold AGM.
Accounts and reports	Must lay these before general meeting. Must file within 6 months (s.442).	Need not do so. Must file within 9 months (s.442).
Small- and medium-sized companies	Not applicable.	May qualify as small- or medium-sized, and take advantage of audit exemptions (small companies) and less stringent regime for filing.
Appointment of auditors	Must appoint auditors each year if necessary (s.489).	Existing auditors may be deemed to be re-appointed, subject to conditions (s.487).
Pre-emption rights	May not be excluded.	May be excluded.
Payment for shares	Additional rules apply to public companies, including that shares must be at least $\frac{1}{4}$ paid up (s.586) and concerning valuations for non-cash consideration (s.593).	Not applicable.
Reduction of capital	Needs special resolution confirmed by the court (s.641).	Needs only special resolution and directors' solvency statement (s.642).
Power to redeem or purchase shares out of capital	Not applicable.	May do so, subject to conditions (s.709).

In addition, special rules apply to **quoted companies** with regard to publication of details on the company website and directors' remuneration reports. Quoted companies are also known as **listed companies**. This is because their shares are listed (or quoted) on public stock exchanges.

A private company may apply to the Registrar of Companies to be re-registered as a public company (or a public company as a private company) provided certain conditions and procedures are satisfied (ss.90–101).



Interactive question 2: Types of company

Alex, Barry and Carol have operated as a partnership for five years trading in domestic carpets. The business has been successful and they are now considering expanding the business operations by opening three new shops and an additional wholesale unit. The partners are aware that the expansion will require new business capital. They are considering the formation of a company rather than continuing as a partnership.

Requirement

What types of company may be formed under the Companies Act 2006? Which type of company is suitable for this business?

See **Answer** at the end of this chapter.



Choosing an appropriate corporate form for a given situation requires you to appreciate the context in which the business operates, not just the desires of the client. For example, a client may desire the status that owning a plc brings, but that choice might not be appropriate given their circumstances.

5 Formation of a company



Section overview

- There are a variety of documents required to form a company.
- Companies can be bought 'off the shelf'
- Promoters make business preparations for a new company.

A company may not be formed for an unlawful purpose.

6.1 Registration documents

In order to form a company, the following documents must be sent to the Registrar of Companies:

Document	Description
Memorandum of association	A memorandum in the prescribed form stating that the subscribers (a) wish to form a company and (b) agree to become members of the company and, in the case of a company with a share capital, agree to take at least one share each. It must be authenticated by each subscriber.
Application	<p>This must state:</p> <ul style="list-style-type: none">• the company's proposed name (which is subject to certain rules designed to prevent the company misleading the public regarding its identity and/or activities)• whether the liability of the members is to be limited and, if so, whether by shares or guarantee• whether the company is to be private or public• whether the registered office is to be in England and Wales or Wales or Scotland or Northern Ireland• the intended address of the registered office (the registered office is the address for delivery of legal documents which may need to be served on a company and also where company registers must or may be kept (see section 6))
Statement of capital and initial shareholdings (applicable to a company with a share capital)	<p>It must state:</p> <ul style="list-style-type: none">• the total number of shares• their aggregate nominal value• details of individual classes of shares• the amount to be paid and unpaid on each share <p>This is essentially a snapshot of the company's share capital at the time of registration.</p>
Statement of guarantee (applicable to a	It must state the maximum amount which each member undertakes to contribute to the net assets of the company if the company is wound up while they are a member or within one year thereafter.

Document	Description
company limited by guarantee)	
Statement of proposed officers	This must give particulars of and the consent of: <ul style="list-style-type: none"> the first director(s) of the company the first company secretary (optional in the case of a private company)
Statement of compliance	This is a statement that the requirements of the Act have been complied with.

Articles of association may also be submitted, but if none is supplied, the default articles will apply (see section 5).

If the Registrar is satisfied that the registration requirements of the Act have been complied with, they will register the documents and issue a **certificate of incorporation**, naming and describing the company and giving its date of incorporation and registered number.

This certificate is conclusive evidence that the company is registered in accordance with the Act and is a body corporate. If irregularities in formation procedure or an error on the certificate are later discovered, it is nonetheless valid and conclusive (*Jubilee Cotton Mills Ltd v Lewis 1924*).

Note that a **public company** also needs to obtain a **trading certificate** before it can commence trading. It must submit:

- an application stating (amongst other things) that the nominal value of the company's allotted share capital is not less than the 'authorised minimum'; and
- a statement of compliance (s.762).

Any transaction in **contravention** of this provision will render any company officer in default liable to a fine but the transaction will remain valid. Failure to obtain a trading certificate within a year of incorporation may result in a compulsory winding up (s.122 Insolvency Act 1986).

6.2 Companies 'off-the-shelf'

Because the registration of a new company can be a lengthy business, it is often easiest for people wishing to operate as a company to purchase an **'off-the-shelf' company**.

This is possible by contacting enterprises specialising in registering a stock of companies, ready for sale when a person comes along who needs the advantages of incorporation.

Normally the persons associated with the company formation enterprise are registered as the company's subscribers, and its first secretary and director. When the company is purchased, the shares are transferred to the buyer, and the Registrar is notified of the director's and the secretary's resignation.

There are two principal advantages to such 'off-the-shelf' companies:

- It is obviously a quicker way of achieving the result of having a company 'ready to go'.
- It avoids any potential liability arising from pre-incorporation contracts (see section 3.3) as the company already exists.

There are disadvantages, however, since the following changes may need to be made:

- Change of name
- Transfer of subscribers' shares
- Change of directors and possibly company secretary
- Alteration of articles

6.3 Promoters and pre-incorporation contracts

A promoter is a person who takes the procedural steps to get a company incorporated; the term 'promoter' includes anyone who makes **business preparations** for the company. However a person who acts merely in a professional capacity in company formation, such as a solicitor or an accountant, is not on that account a promoter.

A **promoter owes certain duties** to the company:

- A general duty to exercise **reasonable care and skill**
- A **fiduciary duty** to disclose any personal interest in a transaction and, sometimes, to account for monies received. Generally speaking, any profits which they make from promoting the company and fails to disclose must be surrendered to the company. However, if they disclose them and the company gives consent, they may retain any legitimate profits.

It was held in *Erlanger v New Sombrero Phosphate Co 1878* that if the promoter does not make a proper disclosure of legitimate profits, or if they make wrongful profits, the primary remedy of the company is to rescind the contract and recover its money.

A **legitimate profit** is made by a promoter who acquires interest in property before promoting a company and then makes a profit when they sell the property to the promoted company, provided they disclose it.

A **wrongful profit** is made by a promoter who enters into and makes a profit personally in a contract as a promoter in breach of their fiduciary duty.

In the case of a public company, disclosure is made through the listing particulars or prospectus. Disclosure in a private company should be to existing and prospective members or to the board of directors, provided it is independent of the promoter.

Since a company has no capacity to enter into contracts before its coming into existence, if a promoter makes a contract on the company's behalf before incorporating (a '**pre-incorporation contract**'), the following will apply:

- The **company cannot ratify** the contract since it did not exist when the contract was made (*Kelner v Baxter 1866*). In this case, promoters agreed on behalf of a company, that had not been formed, to purchase stock for resale. Subsequently, the company was formed, it took delivery and sold the stock, but failed to pay for it. The court held that the company was not liable because it cannot ratify a pre-incorporation contract that was created before the company existed. The promoters were liable.
- The **company is not bound by it** even after incorporation and even if it has derived some benefit from it (*Re National Motor Mail Coach Ltd, Clinton's Claim 1908*).
- The **company cannot enforce the contract** against the third party unless the promoter and third party have given rights of action to the company under the **Contracts (Rights of Third Parties) Act 1999** (TSO, 1999).
- The contract takes effect (subject to any agreement to the contrary) in the same way as one made with the **promoter** and they are **personally liable** on it (s.51).

A promoter can **avoid potential liability**, most usually by:

- not making contracts until the company has been incorporated;
- using an off-the-shelf company; or
- agreeing a draft only with the third party on the basis that the company, once formed, will enter into the agreed form with the third party.

Where a promoter is already liable on a pre-incorporation contract, they may be able to arrange for the company to **novate** the contract (ie, enter into a new contract on identical terms), in which case they should also secure the third party's consent to the promoter thereupon being released from personal liability.

Note that giving rights to the company under the Contracts (Rights of Third Parties) Act 1999 does not also remove a promoter's liability since the Act provides that the original parties remain liable on the contract.

A promoter usually incurs **expenses** in preparations, such as drafting legal documents, made before the company is formed. They cannot legally claim any remuneration or indemnity for their services or expenses but, in practice, will generally arrange that the first directors, of whom they may be one, agree that the company shall make such payment to them.



Interactive question 3: Pre-incorporation contracts

Imran is in the process of setting up a new company, Silver Stumps Ltd. Before submitting the application for registration, he enters into a contract on behalf of the company with Greenfields plc for the purchase of a cricket ground on the banks of the River Avon. Shortly after the company is

registered and a certificate of incorporation issued, Silver Stumps Ltd finds that it is unable to raise sufficient funds and so fails to complete on the purchase on the due date.

Which of the following best describes the legal position?

- A Greenfields plc may enforce the contract against Silver Stumps Ltd because Silver Stumps Ltd automatically assumes responsibility for contracts entered into on its behalf upon incorporation.
- B Provided Silver Stumps Ltd ratifies the contract with Greenfields plc, Greenfields plc may enforce the contract against Silver Stumps Ltd.
- C Greenfields plc may enforce the contract against Imran personally because Silver Stumps Ltd cannot ratify the contract.
- D Imran's liability on the contract ceased because he has transferred all rights to Silver Stumps Ltd in accordance with the Contracts (Rights of Third Parties) Act 1999

See **Answer** at the end of this chapter.

7 *A company's name*



Section overview

- There are rules which restrict a company's freedom to choose any name.
 - A company's name may be changed either through the company's choice or as directed by the Registrar.
 - A company's name must be disclosed in accordance with the Act.
-

The Act sets out rules which provide for certain company names to be prohibited, for a name to be changed and requiring disclosure of a company's name and business name (exceptions are set out in ss.60–62).

8.1 Prohibited names

You have already learned that the name of a public company should end with 'public limited company' (or 'plc') and that a private limited company should end with 'limited' or 'ltd'.

In addition, the name of a company should be chosen with care, having regard to the following rules (contained in Part 5 of the Act):

- The company will not be registered if the Registrar considers the name to be **offensive**, or if its use could constitute a **criminal offence**.
- The approval of the Secretary of State is required if the name is **sensitive** in some way or likely to suggest some **connection** with central or local government, or any public authority. Words such as 'British' or 'International', for example, are only likely to be sanctioned if the size of the company matches its pretensions.
- Words which indicate that the company is of another **type or legal form** are not permitted.
- A company cannot be registered if its name is the **same as** or virtually the same as the name of an existing company.



Professional skills focus: Structuring problems and solutions

Using the rules covering which company names are prohibited will help narrow down the possible names that can be chosen for a new company.

8.2 Change of company name

A company may **choose** to alter its name at any time by passing a special resolution to that effect or otherwise as provided for in its articles (s.77). The company must notify the Registrar accordingly and obtain a new certificate of incorporation. The new certificate merely reflects the change of name – a new company is not formed. The change does not affect any rights, obligations or proceedings of the company.

The Secretary of State may order a company to change its name for a number of reasons, including where it is considered to be the **same as** or virtually the same as an existing company name or that it might otherwise **mislead** the public.



Interactive question 4: Formation of company

What are the documents that must be delivered to the Registrar on formation of a private company limited by shares?

See **Answer** at the end of this chapter.

8.3 Disclosure of company name

The name of the company must be displayed in certain locations and on certain documents in accordance with regulations made by the Secretary of State (s.82). The name must also be engraved legibly on the company seal if the company has chosen to have one (s.45). Breach of either provision may result in a fine.

8.4 Business names

Most companies carry on business under their registered names. However, a company, just like an individual or partnership, may adopt a 'business name'.

Business names are subject to similar rules as to words or names that are misleading or otherwise prohibited or that require the approval of the Secretary of State in the case of company names.

9 *Articles of association*



Section overview

- Every company is required to have articles of association ('articles') and model articles apply where a company does not register its own.
- Articles prescribe regulations governing the management of the company's affairs, the rights of the shareholders and the powers and duties of the directors.
- Articles form part of the constitution of a company and bind the company and its members.
- Articles may be altered by the company in general meeting.

A company's articles form part of its constitution, along with all special resolutions and other relevant resolutions and agreements (s.17). Sometimes a power conferred on a company by the Act is expressed to be subject to any restriction or prohibition contained in the company's articles (for example, the power of a private limited company to reduce its capital). Where the Act prohibits something permitted by the articles, the Act will prevail.

10.1 Model articles

'**Model articles**' prescribed by the Secretary of State in respect of different types of companies, will apply wherever a company is formed without registering articles or insofar as it registers articles that do not exclude or modify the model articles. The prescribed articles thus operate as **default** articles and are commonly adopted by companies limited by shares, either in their entirety or with small

amendments. Listed companies must have their own full-length articles containing a number of special provisions as required by stock exchange rules.

10.2 The contractual effect of a company's constitution

Under s.33 CA'06, the provisions of a company's constitution (ie, articles and relevant resolutions and agreement) bind the company and its members as if each had covenanted to the other to observe those provisions. They do not bind the company to third parties.

This principle applies only to rights and obligations which affect members **in their capacity as members**. Thus it applies to defeat an action when an outsider, who is also a member, seeks to rely on the articles in support of a claim made **as an outsider**.

This point can be illustrated by the following case:

Eley v Positive Government Security Life Assurance Co 1876

The facts: Eley, a solicitor, drafted the original articles and included a provision that the company must always employ him as its solicitor. Eley became a member of the company some months after its incorporation. He later sued the company for breach of contract in not employing him as a solicitor.

Decision: Eley could not rely on the article since it was a contract between the company and its members and he was not asserting any claim **as a member**.

S.33 gives to the constitution the effect of a contract made between (a) the company and (b) its members individually. It also acts as a contract on the members **in their dealings with each other**.

In certain cases, if a contract contains no specific term on a particular point but the articles do, then the **contract may be deemed to incorporate the articles** to that extent. In one case, for example, a director's contract with the company was silent as to remuneration but the articles provided that directors would be paid £1,000 per annum. The court held that although the articles did not constitute a contract between the company and the director (in his capacity as director) they could be used to imply the term as to remuneration into his contract (*Re New British Iron Co, ex parte Beckwith 1898*).

Generally speaking, if a contract incorporates terms of the articles, it is subject to the company's **right to alter** its articles. However, where rights have already accrued under a contract, say for services rendered **before** the alteration, those rights will be unaffected by any alteration of the articles.

10.3 Alteration of articles

A company may normally alter its articles by passing a special resolution to that effect (s.21). However, where the articles contain '**provision for entrenchment**' such provisions can only be altered with the agreement of all company members or by court order (s.22). Such a provision for entrenchment might, for example, require that certain articles can only be changed if particular conditions are met or procedures followed that are more restrictive than the usual requirement for a special resolution. A company cannot provide that a provision for entrenchment can never be replaced or amended and must give notice to the Registrar whenever one is included or removed.

A copy of any amended article must be sent to the Registrar within 15 days.

A member will not be bound by any alteration made after they became a member insofar as the alteration requires them to take more shares or increase their liability in any way to pay money to or contribute to the company (s.25).

11 Administrative consequences of incorporation



Section overview

- Incorporation necessitates compliance in a number of areas including the ownership, management and financing of companies dealt with in subsequent chapters. There are also administrative consequences, including:

- the need to maintain registers and records
- the need to file a confirmation statement
- the need for public companies to have a company secretary

12.1 Company records

The term **'company records'** refers to any register, agreement, minutes, accounting records or other documents required to be kept by the Act. They may be kept in hard copy or electronic form. In each case, the company record is to be kept at the company's registered office or at any other place specified in regulations made by the Secretary of State. The Act sets out rules relating to rights of inspection (and sometimes rights to receive copies) for members and others. Generally speaking, any contravention of any of these provisions renders the company and every company officer in default guilty of an offence and liable to a fine.

In particular, a company is required to keep the following company records:

- A register of members
- A register of directors and (if applicable) company secretaries
- A register of people with significant control (containing information on individuals or companies who own or control over 25% of a company's shares or voting rights, or who exercise control over the company and its management in other ways). This register must be updated whenever there is a change.
- A register of directors' residential addresses (this information is 'protected information' and must not be made available for public inspection)
- Copies of directors' service contracts and indemnity provisions restricting directors' liabilities
- Records of resolutions and minutes of members' and directors' meetings (for a period of 10 years)
- Directors' statement and auditor's report
- A register of charges and copies of charges

In addition, a company is required to give copies of the company's articles, and certain other documents of constitutional importance, free of charge upon request (s.32). A company is not required to keep a register of debenture holders but, if it does, it must comply with the provisions concerned with its availability for inspection (s.743).

12.2 The register

The Registrar of Companies maintains a **'register'** in respect of each company at Companies House. This register contains:

- the certificate of incorporation
- the trading certificate (if it is a public company)
- certificates of registration of charges
- the information contained in documents delivered to the Registrar in accordance with any statutory provision, including annual accounts and return, special and some ordinary resolutions and changes of directors

The Registrar is required to keep certain information in electronic form (including the articles, annual accounts and reports, confirmation statements, statements of capital and statement of directors), but otherwise may keep the register in such form as they think fit.

Subject to exceptions listed in the Act (s.1087), any person has the right to inspect the register and, with payment of a fee, to require a copy of any material on the register. The exceptions to this right to inspect include the following:

- Protected information on directors' residential addresses
- The contents of any charges

Any person also has the right to a copy of any certificate of incorporation and the right to inspect the Registrar's index of company names.

12.3 Confirmation statement

Every company must send a **confirmation statement** to the Registrar. The statement can be sent at any time, but no more than **12 months** may elapse between statement submissions. The purpose of the confirmation statement is to keep the Registrar informed about certain changes to the company. Much of this information would have been submitted when the company is formed.

Confirmation statements are used to confirm that there have been no changes to the information held by the Registrar during the previous 12 months, if none have been made. If changes have been made, it records just the changes that have occurred.

Examples of information requiring confirmation are as follows:

- The address of the registered office of the company
- The address (if different) at which the register of members or debenture holders is kept
- The type of company and its principal business activities
- The total number of issued shares, their aggregate nominal value and the amounts paid and unpaid on each share
- For each class of share, the rights of those shares, the total number of shares in that class and their total nominal value
- Particulars of members of the company
- Particulars of those who have ceased to be members since the last return
- The number of shares of each class held by members at the return date, and transferred by members since incorporation or the last return date
- The particulars of directors, and secretary (if applicable)

12.4 Company secretary

Every **public company** must appoint a company secretary who satisfies at least one of the following qualification requirements.

- Employment as a plc's secretary for three out of the five years preceding appointment
- Membership of one of a list of qualifying bodies: the ACCA, CIMA, ICAEW, ICAS, ICAI or CIPFA
- Qualification as a solicitor, barrister or advocate within the UK
- Employment in a position or membership of a professional body that, in the opinion of the directors, appears to qualify that person to act as company secretary

They should also have the 'necessary knowledge and experience' as deemed by the directors.

Private companies may choose to have a company secretary but are not obliged to do so. The company secretary is usually appointed by the directors. A sole director of a private company is permitted to act as company secretary if the company chooses to have one.

A company secretary is an employee of the company. They are also an 'officer' of the company and therefore faces potential civil and criminal liability where the Act so provides in the event of contravention by the company of legislative requirements.

The Act does not define the role of the company secretary and it will vary according to the size and nature of each company. However, typically, a company secretary will convene the meetings of the board of directors, issue the agenda and draft the minutes. They will also be responsible for the various statutory registers and for filing documents with the Registrar. In a smaller company, they are also likely to act as general administrator and compliance manager and might even be responsible for the accounts and taxation aspects of the company's business.

The company secretary is recognised as having the power to contract on behalf of the company in respect of its administrative operations, including the employment of office staff and management of the office generally. Thus they may bind the company by their actions on the basis of implied actual authority as well as any express or ostensible authority. However, a company secretary's implied authority is limited and does not extend to buying land, for example, nor to borrowing money, nor to doing other acts usually undertaken by the directors.

13 Accounts and audit requirements



Section overview

Incorporation also requires a company to file statutory accounts which may be subject to audit. The requirements for accounts and audit are dependent on the type and size of the company concerned.

Every company must comply with Companies Act 2006 rules requiring the keeping of accounting records and to file accounts which may or may not be subject to audit. The rest of this chapter focuses on what these requirements are and how the rules differ depending on the type and size of the company concerned.

14.1 Accounts and reports requirements

Generally speaking, every company must keep accounting records and must produce annual accounts. These accounts must be prepared in accordance with UK or international accounting standards and should be in the prescribed form. In addition, the directors are responsible for producing a report. These accounts and reports need then to be published and circulated to members and filed at the registry.

The following framework of rules generally applies to all companies. However, certain variations apply to companies which are classified as micro, small or medium. You should also bear in mind that there are other exceptions and points of detail which may be relevant in practice to individual companies.

Document	Notes
Accounting records	<p>'Adequate accounting records' must be kept that are sufficient to show the company's financial position at any time with reasonable accuracy, including:</p> <ul style="list-style-type: none">• Daily entries of income and expenditure• Record of assets and liabilities• (If applicable) statements of stock and stock takings <p>A company's underlying accounting records must be kept for three years in the case of a private company, and six years in that of a public one.</p>
Annual accounts (including group accounts)	<p>Under the Companies Act 2006, these are a balance sheet and profit and loss account. However, accounts produced under international accounting standards are also permitted.</p> <p>Consolidated group accounts are also required where the company is a parent company.</p> <p>The accounts must give a 'true and fair view' of the company's financial position in respect of its financial year. Notes to the accounts must deal with employee numbers and costs and directors' benefits.</p> <p>The accounts must be approved by and signed on behalf of the board of directors.</p>
Directors' report (including consolidated report)	<p>This must contain, in respect of the financial year, the:</p> <ul style="list-style-type: none">• names of directors• principal activities of the company• statement that the auditor is not unaware of any relevant audit information

Document	Notes
	<p>A recommended dividend and business review, (including principal risks and uncertainties facing the company) are usually included although not always (for example small companies).</p> <p>(A consolidated report should be produced where group accounts are prepared.) The directors' report must be approved by and signed on behalf of the board of directors.</p>
Directors' remuneration report	This applies to quoted companies only and is subject to the members' approval.
Auditor's report	<p>Where accounts are audited the report must:</p> <ul style="list-style-type: none"> • identify the accounts audited and the financial reporting framework applied in their preparation • describe the scope of the audit • state whether, in the auditor's opinion, the accounts give a true and fair view of the company's financial affairs • state whether the directors' report is consistent with the accounts
Strategic report	<p>Under the Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013 (TSO, 2013), large and medium-sized companies must prepare a strategic report as part of their financial statements.</p> <p>The purpose of the strategic report is to inform members of the company and help them assess how the directors have performed their duty to promote the success of the company.</p> <p>The strategic report must contain a fair review of the company's business, and a description of the principal risks and uncertainties facing the company.</p> <p>The review required is a balanced and comprehensive analysis of the development and performance of the company's business during the financial year, and the position of the company's business at the end of that year, consistent with the size and complexity of the business.</p>
Companies (Miscellaneous Reporting) Regulations 2018 (TSO, 2018)	<p>This Act introduced a number of new reporting requirements. These include:</p> <p>Disclosures on the extent of engagement with employees, suppliers, customers and relevant others. These disclosures are centred around how the business builds and fosters relationships with these stakeholders. This applies to companies with over 250 employees in regard to employee engagement.</p> <p>For other stakeholder engagement, this applies to a company that exceeds any two of the following thresholds: Turnover > £36 million, Balance Sheet Assets > £18 million and Employees > 250.</p> <p>A statement in the strategic report describing that the directors have had regard to the matters set out in s.172 of the Companies Act 2006 when performing their s.172 duties (see Chapter 6 on directors' duties). This applies to large companies only.</p> <p>A statement of corporate governance arrangements. This sets out the details of which particular corporate governance code the organisation applied during the year, how the code was applied and whether it departed from it in any way. If no code was followed then an explanation of why no code was followed should be provided and what</p>

Document	Notes
	<p>arrangements for corporate governance had been applied instead.</p> <p>This applies to companies that either have over 2,000 employees globally, or Global Turnover > £200 million and Global Balance Sheet > £2 billion.</p> <p>Disclosures on remuneration. The regulations require additional information to be provided about director remuneration. Such additional information includes the amount of director remuneration that is attributable to share price growth and pay ratios (comparing the CEO's remuneration with various levels of employee remuneration). This applies to quoted companies with more than 250 employees.</p>
Companies (Directors' Report) and Limited Liability Partnerships (Energy and Carbon Report) Regulations 2018 (TSO, 2018)	This Act introduced additional directors' report disclosure requirements concerning company emissions, energy consumption and energy efficiency. It only applies to quoted companies, large unquoted companies and to large LLPs.

Non-compliance with these provisions may render the company and any relevant officer liable to a fine and, in some cases, imprisonment.

14.2 Publication of accounts and reports

A **company's accounts and reports** must be publicised in compliance with the Companies Act, including filing them at the Registry within **nine months (private company)** or **six months (public company)** after the end of the relevant accounting reference period.

You should be aware that a less stringent regime applies to **small and medium-sized companies** (for example, they may file 'abbreviated accounts' and small companies have a simpler directors' report).

Micro-entities also have an option to take advantage of certain accounting exemptions. These include filing a simple profit and loss account or no profit and loss account at all. However, a balance sheet must be filed, but this is only required to provide a minimum of accounting information (referred to in the regulations as minimum accounting items). There are only two compulsory notes to the accounts (advances to directors and financial commitments), the directors' report is as required for small companies and there is no requirement to comply with parts of accounting standards that require information in addition to that required by law of micro-entities (unless the company chooses to disclose this voluntarily).

Broadly, micro-entities and small- and medium-sized companies are private companies which comply with two or more of the following requirements:

	Micro	Small	Medium
Turnover	≤ £632k	≤ £10.2m	≤ £36m
Balance sheet	≤ £316k	≤ £5.1m	≤ £18m
Employees	≤ 10	≤ 50	≤ 250

14.3 Audit requirements

Generally speaking, a company is required to appoint auditors to carry out an audit of its annual accounts. Some companies are exempt, namely:

- Micro and small companies (that satisfy the small company criteria above)¹
- Dormant companies¹
- Non-profit-making companies subject to public sector audit

- Subsidiary companies whose parent company guarantees their liabilities outstanding at the balance sheet date

Note: 1 But not certain companies, including insurance or banking companies

Even where an exemption applies, an audit can be required by 10% or more of the members or by members representing at least 10% of the nominal value of the company's issued share capital.

An auditor or auditors must be **appointed** for each financial year and can be appointed by the directors or by the members passing an ordinary resolution or, in the event of default, by the Secretary of State. The auditor's remuneration should be fixed by those appointing them. An auditor of a private company is deemed to be re-appointed unless the company decides otherwise (s.487).

Auditors have a **right of access** at all times to the company's books and accounts. They have a **duty** to carry out a proper investigation in preparing their report. They may be **removed** by ordinary resolution, subject to **special notice** being given and the auditor having the right to make representations.

Any person who knowingly or recklessly causes an auditor's report to include any matter that is misleading, false or deceptive commits an **offence** punishable by a fine. (See also Chapter 4 regarding auditors' liability for negligent misstatement.)



Professional skills focus: Concluding, recommending and communicating

When answering a scenario question that requires you to apply the thresholds for company types and exemptions from reporting and audit, you should focus on just applying the rules you have been given to the facts in the scenario. Avoid basing your conclusion on non-relevant information.

Summary

!! Error resolving referred content !!

Further Question Practice

1 Knowledge diagnostic

Before you move on to question practice, complete the following knowledge diagnostic and check you are able to confirm you possess the following essential learning from this chapter. If not, you are advised to revisit the relevant learning from the topic indicated.

Confirm your learning	
1.	Do you know the principle of law that was decided by the Salomon v Salomon case? (Topic 1)
2.	Can you list five differences between a private and public company? (Topic 2)
3.	Do you know what a memorandum of association is? (Topic 3)
4.	Do you know how a company may change its name? (Topic 4).
5.	Do you know what model articles are? (Topic 5)
6.	Can you list five records that companies must keep? (Topic 6)
7.	Do you know the criteria that companies must meet in order to be classified as micro, small and medium? (Topic 7)

2 Chapter Self-test question practice

Aim to complete all the self-test questions at the end of this chapter. Once completed, attempt all the questions in Chapter 5 of the Law Question Bank. Refer back to the learning in this chapter for any questions which you did not answer correctly or where the suggested solution has not provided sufficient explanation to answer all your queries. Once you have attempted these questions, you can move on to the next chapter.


Technical References

- *Contract (Rights of Third Parties) Act 1999*. (1999). London, TSO.
- *Companies Act 2006*. (2006). London, TSO.
- *Companies Act 2006 (Strategic report and Directors' Report) Regulations 2013*. (2013) SI 2013/1970. London, TSO.
- *Companies (Directors' Report) and Limited Liability Partnerships (Energy and Carbon Report) Regulations 2018*. (2018) SI 2018/1155. London, TSO.
- *Companies (Miscellaneous Reporting) Regulations 2018*. (2018) SI 2018/860. London, TSO.
- *Company Directors Disqualification Act 1986*. (1986). London, HMSO.
- *Insolvency Act 1986*. (1986). London, HMSO.

Self-test questions

Answer the following questions.

- Define a company.
- What was the name of the case that is generally cited as establishing the principle of corporate personality?
- Indicate if the following statement is true or false.

	True/False
 An unlimited company has unlimited liability. A limited company has limited liability.	<u>False</u>



-  Give three examples of where the courts might lift the veil of incorporation.

Requirement



- Give three examples of where statute provides for the veil of incorporation to be lifted.
- True or false?

	True/False
 A company is not required by law to have a company secretary?	False

-  What is the minimum share capital for:

	Response
 (1) a private company?	
 (1) a public company?	

Pull down list

- No minimum
- £100,000
- £20,000
- £50,000
- List 10 examples of how public companies differ from private companies.
- If a public company does business or borrows before obtaining a trading certificate from the Registrar, the transaction is:
 - A invalid and the third party cannot recover any loss
 - B invalid but the third party can recover any loss from the directors
 -  invalid and the directors are punishable by a fine
 -  invalid but the third party can sue the directors for liquidated damages
- The memorandum of association for a company limited by shares records the subscribers' agreement and intention in respect of three matters. Name them.
- What is an off-the-shelf company and what is its significance in company formation?



- Indicate if the following statements are true or false.

	True/False
(1) A company can ratify a pre-incorporation contract thus releasing the promoter from any personal liability.	False
(1) A promoter should avoid personal liability by utilising the Contracts (Rights of Third Parties) Act 1999 and giving rights of enforcement to the company as third party.	False

	True/False
A company cannot be registered unless it submits a copy of its articles of association when applying for registration.	<u>False</u>

- How can a company change its articles of association?
- In the event of conflict which prevails: the articles or the Act?
- Which one of the following is not compulsory?
 - A Register of members
 - B Register of directors
 - Register of secretaries
 - Register of debentureholders
 - Register of charges
- What are the 'accounting records' that a company is required to maintain?

	True/False
Small companies and dormant companies are not required to have their accounts audited.	True

Now go back to the Introduction and ensure that you have achieved the Learning outcomes listed for this chapter.

Answers to Interactive questions

Answer to Interactive question 1

- D The veil will be lifted because Sandy was acting while disqualified and both he and Beach Holidays Ltd will be liable for the debts on a joint and several basis.

Directors who participate in the management of a company while disqualified will be liable for the company's debts on a joint and several basis. Where the director is also a member, as here, this is an example of the corporate veil being lifted

Answer to Interactive question 2

The main categories of companies which may be formed under the CA'06 are a public company limited by shares, and a private company, which may be limited by shares or by guarantee or be an unlimited company.

A private company limited by shares is the most suitable type for a small business venture of this kind. It offers the advantages of being a corporate entity separate from its members, giving them the protection of limited liability. This means that on a winding-up of the company, each shareholder would only have to contribute any amount that was not already paid up on their shares.

The main restriction on a private company is that it may not offer its shares or debentures to the public. However, it is subject to fewer restrictions than a public company including not needing a company secretary or an AGM. It may use capital to finance the purchase of its own shares and it may give financial assistance for the purchase of its shares. If the company ranks as a small or a medium sized company for the purposes of its annual accounts, the accounts delivered to the registrar need not contain all the material required in the accounts of a public company and need not be audited.

Answer to Interactive question 3

- D Imran's liability on the contract ceased because he has transferred all rights to Silver Stumps Ltd in accordance with the Contracts (Rights of Third Parties) Act 1999

There is no automatic assumption of responsibility for promoters' contracts on incorporation. A company cannot ratify a contract entered into by a promoter before the company is formed because a principal must have been in existence at the time the contract was made in order to be capable of ratifying it. The reference to Imran's rights being transferred by the Act in D is inappropriate

Answer to Interactive question 4

- Memorandum of association
- Application stating name, domicile and intended address of registered office, and a statement describing the liability of the members as limited by shares and whether the company is to be public or private
- Copy articles of association (although if none is submitted, prescribed default articles will apply)
- Statement of capital and initial shareholdings
- Statement of proposed directors (and company secretary if applicable)
- Statement of compliance

Answers to Self-test questions

- 1 A company is an entity registered under the Companies Act 2006 or any earlier Act.
- 2 *Salomon v Salomon & Co Ltd 1897*

	True/False
An unlimited company has unlimited liability. A limited company has limited liability.	<u>False</u>

Any company has unlimited liability for its debts. In a limited company, the liability of the members (not the company) is limited to the amount outstanding on their shares or the amount of any guarantee.

- 3
 - Where a subsidiary company can be regarded as an agent of the holding company
 - To reveal the true national identity of a company
 - Where the company is a quasi-partnership
 - Where a company is a sham
- 4
 - Where a public company trades without a trading certificate
 - In cases of fraudulent or wrongful trading
 - Where a director carries on business when they are disqualified
 - Where directors form a new company with a name identical or similar to that of an insolvent company

	True/False
A company is not required by law to have a company secretary?	False

This is true in the case of private companies but a public company must have a company secretary.

	Response
(1) a private company?	No minimum
(1) a public company?	£50,000

Feature	Public	Private
Liability	Must be limited.	May be limited or unlimited.
Share capital	Subject to authorised minimum (currently £50,000).	No minimum.
Ability to commence trading	Must have trading certificate before it can commence trading (s.761).	May commence trading once incorporated.
Public offers		

Feature	Public	Private
	Can offer its securities to the public (and may obtain a listing from the stock exchange or other investment exchange).	Prohibited from offering its securities to the public (s.755).
Name	Must end with 'public limited company' or 'plc' (or Welsh equivalent) (s.58).	Must end with 'limited' or 'Ltd' (or Welsh equivalent) although certain companies (including charities) may be exempt from this requirement (ss.59-62).
Loans etc	Loans to persons connected with directors and quasi-loans and credit transactions to directors or connected persons need members' approval (ss.198-202).	These rules do not apply (unless the company is associated with a public company). Only loans made directly to directors need members' approval.
Directors	Must have at least two directors (s.154).	Must have at least one.
Company Secretary	Must have one (s.271).	Need not have one (s.270).
Written resolutions	Not applicable.	May pass written resolutions instead of calling meetings (s.288).
AGMs	Must hold AGM (s.336).	Need not hold AGM.
Accounts and reports	Must lay these before general meeting. Must file within 6 months (s.442).	Need not do so. Must file within 9 months (s.442).
Small- and medium-sized companies	Not applicable.	May qualify as small- or medium-sized, and take advantage of audit exemptions (small companies) and less stringent regime for filing.
Appointment of auditors	Must appoint auditors each year if necessary (s.489).	Existing auditors may be deemed to be re-appointed, subject to conditions (s.487).
Pre-emption rights	May not be excluded.	May be excluded.
Payment for shares	Additional rules apply to public companies, including that shares must be at least ¼ paid up (s.586) and concerning valuations for non-cash consideration (s.593).	Not applicable.
Reduction of capital	Needs special resolution confirmed by the court (s.641).	Needs only special resolution and directors' solvency statement (s.642).
Power to redeem or purchase shares out of capital	Not applicable.	May do so, subject to conditions (s.709).

5 Correct answer(s):

C valid and the directors are punishable by a fine

6

- Their wish to form a company
- Their agreement to becoming members of the company
- Their agreement to subscribe for at least one share each

7 It is a dormant company available for purchase by those wishing to set up a company. It avoids the usual formation formalities and the problems associated with pre-incorporation contracts do not arise.

	True/False
(1) A company can ratify a pre-incorporation contract thus releasing the promoter from any personal liability.	False
(1) A promoter should avoid personal liability by utilising the Contracts (Rights of Third Parties) Act 1999 and giving rights of enforcement to the company as third party.	False

(1) Since the company was not in existence at the time of the contract.

(2) The Act provides that the original parties remain liable on the contract.

	True/False
A company cannot be registered unless it submits a copy of its articles of association when applying for registration.	<u>False</u>

Where articles are not registered, model ('default') articles prescribed by the Secretary of State will apply.

8 By special resolution, unless there is provision for entrenchment, in which case unanimous consent or a court order is required.

9 The Act

10 Correct answer(s):

D Register of debentureholders

11 Adequate accounting records, that are sufficient to show the company's financial position at any time with reasonable accuracy, including daily entries of income and expenditure, a record of assets and liabilities and (if applicable) statements of stock and stocktakings.

	True/False
Small companies and dormant companies are not required to have their accounts audited.	True

Although not if the company is an investment or banking company.

Appendix

Tax Tables FA2020

Syllabus area: Administration

SUBMISSION DATES

Submission dates for 2020/21 personal self-assessment tax returns

	Later of: 31 January 2022
Return filed online	3 months from the date of issue of return
	Later of: 31 October 2021
Paper returns	3 months from the date of issue of return

Submission dates for corporation tax returns

Must be filed by 12 months from the end of the period of account.

Submission dates for PAYE information: Real Time Information

Information	Filing date
Full Payment Submission (FPS)	On or before the day the employee is paid
P60 (to employees)	31 May following the tax year end
P11D	6 July following the tax year end

PAYMENT DATES

Payment dates for income tax

Payment	Filing date
First interim payment ⁽¹⁾	31 January in the tax year
Second interim payment ⁽¹⁾	31 July following the tax year end
Balancing payment	31 January following the tax year end

(1) Interim payments are not required if the tax paid by assessment for the previous year was less than:

£1,000; or

20% of the total tax liability (income tax and Class 4)

Payment dates for capital gains tax

Capital gains tax is payable by 31 January following the tax year end.

Payment dates for corporation tax

	Nine months and one day after the end of an accounting period
Corporation tax	
Corporation tax by instalments – large companies	The 14 th day of months 7, 10, 13 and 16 counted from the start of a 12-month accounting period
Corporation tax by instalments – very large companies	The 14 th day of months 3, 6, 9 and 12 counted from the start of a 12-month accounting period

Payment dates for VAT

	Due date
Electronic payment	7 calendar days after the last day of the month following the end of the return period
Direct debit payment	Collected automatically 3 working days after electronic payment due date

MAIN PENALTY PROVISIONS

PENALTIES FOR INCORRECT RETURNS

The penalties are a percentage of the potential lost revenue

Reason for penalty	Maximum penalty	Minimum penalty with unprompted disclosure	Minimum penalty with prompted disclosure
Careless action	30%	Nil	15%
Deliberate but not concealed action	70%	20%	35%
Deliberate and concealed action	100%	30%	50%

PENALTIES FOR FAILURE TO NOTIFY

Failures to notify chargeability to tax, or liability to register for tax that leads to a loss of tax will result in a penalty. The penalties are a percentage of the potential lost revenue.

Reason for penalty	Maximum penalty	Minimum penalty with unprompted disclosure		Minimum penalty with prompted disclosure	
Deliberate and concealed action	100%	30%		50%	
Deliberate but not concealed action	70%	20%		35%	
		>12m	<12m	>12m	<12m
Any other case	30%	10%	Nil	20%	10%

COMPANIES: PENALTIES

Offence	Maximum Penalty
Failure to notify chargeability within 12 months of end of accounting period	See above: penalties for failure to notify

Corporation tax: penalties for late filing of a corporation tax return

Offence	Penalty ⁽¹⁾
Late return, up to 3 months late	£100 fixed penalty, or £500 for persistent failure
Return more than 3 months late	£200 fixed penalty, or £1,000 for persistent failure
Return filed more than 18 months but less than 24 months after end of return period	Tax geared penalty of 10% of tax unpaid 18 months after end of return period
Return filed more than 24 months after end of return period	Tax geared penalty of 20% of tax unpaid 18 months after end of return period

(1) The tax geared penalty is charged in addition to the fixed penalty but only one of each type of penalty is charged.

INDIVIDUALS: PENALTIES

Offence	Maximum Penalty
Failure to notify chargeability by 5 October following tax year end	See above: penalties for failure to notify
Late payment of income tax or capital gains tax: ⁽¹⁾	
Unpaid 30 days after payment due date	5% of tax unpaid
Unpaid 6 months after payment due date	Further 5% of tax unpaid
Unpaid 12 months after payment due date	Further 5% of tax unpaid

(1) Late payment penalties do not apply to payments on account.

Income tax and CGT: penalties for late filing of a self-assessment return

Offence	Maximum Penalty
Late return	Immediate £100 fixed penalty
Return more than 3 months late	Daily fixed penalties of up to £10 per day for maximum 90 days
Return more than 6 months but less than 12 months late	Further tax geared penalty of 5% of tax due (minimum £300)
Return 12 months late	Further tax geared penalties apply (minimum £300): 100% if deliberate and concealed ⁽¹⁾ 70% if deliberate but not concealed ⁽¹⁾ 5% in all other cases

(1) These tax geared penalties are reduced for disclosure as per penalties for incorrect returns.

PAYE: penalties for late returns/ submissions

Number of employees	Monthly penalty
1 to 9	£100
10 to 49	£200
50 to 249	£300
250 or more	£400

If the form is more than three months late, an additional penalty is due of 5% of the tax and NIC that should have been reported.

Additionally, there is a £300 penalty per late P11D return, with an extra £60 per day charged if the delay continues.

PAYE: penalties for late payment

	No of late payments	% of tax unpaid ⁽¹⁾
	1st	nil
	2 nd , 3 rd & 4 th	1%
	5 th , 6 th & 7 th	2%
	8 th , 9 th & 10 th	3%
Penalties for late payment of in-year PAYE depend on the number of defaults in the tax year	11 th or more	4%
Where a penalty has been imposed and the tax remains unpaid at 6 months		5% ⁽²⁾
Where a penalty has been imposed and the tax		5% ⁽²⁾

remains unpaid at 12 months

(1) The percentage penalty is applied to the total amount that is late in the relevant tax month.

(2) The 6 month and the further 12 month penalties are in addition to the initial penalty for late payment.

VAT: penalties

Offence	Maximum Penalty
Failure to notify liability for registration or change in nature of supplies by person exempted from registration	See above: penalties for failure to notify

VAT: late payment or late filing - default surcharge

Default involving late payment of VAT in the surcharge period ⁽¹⁾	Surcharge as a percentage of the VAT outstanding at the due date
First	2% ⁽²⁾
Second	5% ⁽²⁾
Third	10% ⁽³⁾
Fourth	15% ⁽³⁾

(1) Default if late payment of VAT or filing of VAT return and surcharge liability notice issued, but default surcharge only applies on late payment.

(2) No surcharge if it would be less than £400.

(3) Minimum £30 payable.

VAT errors

An error made on a VAT return can be corrected on the next return provided it was not deliberate and does not exceed the greater of:

- £10,000 (net under-declaration minus over-declaration); or
- 1% x net VAT turnover for return period (maximum £50,000)

Alternatively, a 'small' error which is not deliberate may be corrected via the submission of form VAT652. Errors which are not 'small' or errors which are deliberate should be notified to HMRC on form VAT652.

RECORD KEEPING PENALTY

Offence	Maximum Penalty
Failure to keep and retain tax records	£3,000 per tax year / accounting period

INCOME TAX RATES: 2020/21

	Rate	Taxable income band
Main rates		
Basic rate	20%	£1 - £37,500
Higher rate	40%	£37,501 - £150,000
Additional rate	45%	Over £150,000
Savings rates		
Starting rate for savings	0%	£1 - £5,000
Savings income nil rate	0%	First £1,000 or £500
Savings basic rate	20%	Otherwise chargeable at basic rate

	Rate	Taxable income band
Savings higher rate	40%	Otherwise chargeable at higher rate
Savings additional rate	45%	Otherwise chargeable at additional rate
Dividends rates		
Dividend nil rate	0%	First £2,000
Dividend ordinary rate	7.5%	Otherwise chargeable at basic rate
Dividend upper rate	32.5%	Otherwise chargeable at higher rate
Dividend additional rate	38.1%	Otherwise chargeable at additional rate
Default rates		
Default basic rate	20%	
Default higher rate	40%	
Default additional rate	45%	
INCOME TAX RELIEFS		2020/21
Personal allowance		£12,500

CGT RATES

	2020/21
Gains falling within the remaining basic rate band	10%
Gains exceeding the basic rate band	20%

CORPORATION TAX RATES

	FY 2020
Tax rate	19%
Augmented profits limit for corporation tax payment dates – large companies	£1,500,000
Augmented profits limit for corporation tax payment dates – very large companies	£20,000,000

NATIONAL INSURANCE CONTRIBUTIONS

	2020/21		
	Annual	Monthly	Weekly
NIC CLASS 1			
Primary threshold (PT)	£9,500	£792	£183
Secondary threshold (ST)	£8,788	£732	£169
Upper earnings limit (UEL)	£50,000	£4,167	£962
Apprentice upper secondary threshold (AUST) for under 25s	£50,000	£4,167	£962
Upper secondary threshold (UST) for under 21s	£50,000	£4,167	£962

	2020/21		
	Annual	Monthly	Weekly
NIC CLASS 1			
Employment allowance (per year, per employer)	£4,000		
Class 1 Primary contributions on earnings between PT & UEL	12%		
Class 1 Primary contributions on earnings above UEL	2%		
Class 1 Secondary contributions on earnings above ST where employee aged 21 or over and not an apprentice under the age of 25	13.8%		
Class 1 Secondary contributions on earnings between ST & AUST for apprentices under the age of 25	0%		
Class 1 Secondary contributions on earnings above AUST for apprentices under the age of 25	13.8%		
Class 1 Secondary contributions on earnings between ST & UST for employees under the age of 21	0%		
Class 1 Secondary contributions on earnings above UST for employees under the age of 21	13.8%		
Class 1A contributions	13.8%		

	2020/21
NIC CLASS 2	
Normal rate	£3.05 pw
Small profits threshold	£6,475 pa
NIC CLASS 4	
Annual lower profits limit (LPL)	£9,500
Annual upper profits limit (UPL)	£50,000
Percentage rate between LPL & UPL	9%
Percentage rate above UPL	2%
VAT	
Standard rate of VAT	20%
Reduced rate of VAT	5%

Syllabus Area: Income Tax & NIC

INCOME TAX RATES: 2020/21	Rate	Taxable income band
Main rates		
Basic rate	20%	£1 - £37,500
Higher rate	40%	£37,501 - £150,000
Additional rate	45%	Over £150,000
Savings rates		

INCOME TAX RATES: 2020/21	Rate	Taxable income band
Starting rate for savings	0%	£1 - £5,000
Savings income nil rate	0%	First £1,000 or £500
Savings basic rate	20%	Otherwise chargeable at basic rate
Savings higher rate	40%	Otherwise chargeable at higher rate
Savings additional rate	45%	Otherwise chargeable at additional rate
Dividends rates		
Dividend nil rate	0%	First £2,000
Dividend ordinary rate	7.5%	Otherwise chargeable at basic rate
Dividend upper rate	32.5%	Otherwise chargeable at higher rate
Dividend additional rate	38.1%	Otherwise chargeable at additional rate
Default rates		
Default basic rate	20%	
Default higher rate	40%	
Default additional rate	45%	

INCOME TAX RELIEFS	2020/21
Personal allowance ⁽¹⁾	£12,500
Marriage allowance ⁽²⁾	£1,250

(1) The personal allowance of any individual with adjusted net income above £100,000 is reduced by £1 for every £2 of adjusted net income above the £100,000 limit.

(2) A spouse or civil partner who is a basic rate taxpayer or who has income of less than the personal allowance is allowed to transfer £1,250 of their personal allowance (ie 10% rounded up to the next £10) to their spouse/civil partner provided the recipient spouse is a basic rate taxpayer.

CAPITAL ALLOWANCES

First year allowances available

100% on new and unused zero emissions goods vehicles

100% on new and unused low emission cars ie electrically propelled or with CO₂ emissions of not more than 50 g/km

100% on electric vehicle charging points

Annual investment allowance

£200,000 pa of expenditure incurred by any business on certain plant and machinery from 1 January 2021.

Writing down allowances

18% pa in the main pool

COMPANY VANS, CARS AND FUEL

Van scale charge

No charge applies if there is insignificant private use

£2,792 if van has zero CO₂ emissions and £3,490 if it has CO₂ emissions

Additional £666 if private fuel provided for the van

Company cars - cash equivalent

Zero emissions cars 0% of list price

Company cars - cash equivalent

	2% of list price for cars with a battery range of >130 miles
	5% of list price for cars with a battery range of 70-129 miles
	8% of list price for cars with a battery range of 40-69 miles
Hybrid cars with emissions 1-50g/km	12% of list price for cars with a battery range of 30-39 miles
	14% of list price for cars with a battery range of <30 miles
Other cars	15% of list price for cars emitting 51-54g/km
	16% of list price for cars emitting 55-59g/km
	17% of list price for cars emitting 60-64g/km
	18% of list price for cars emitting 65-69g/km
	19% of list price for cars emitting 70-74g/km
	20% of list price for cars emitting 75-79g/km
	Increased by 1% per 5g/km over the 75g/km relevant threshold

Relevant % is reduced by 2% for cars first registered from 6 April 2020

Capped at 37% of list price (ie emissions of 160g/km or more for cars first registered before 6 April 2020 and 170g/km for cars first registered from 6 April 2020)

Diesel cars that meet the Real Driving Emissions Step 2 (RDE2) standard are treated as above, all other diesel cars have a 4% supplement added to the relevant percentage (subject to 37% cap)

Private fuel provided for company car

£24,500 x company car %

PAYE CODES

L	tax code with personal allowance
M	tax code with personal allowance plus claiming marriage allowance
N	tax code with personal allowance less surrendered marriage allowance
S	income taxed at Scottish rate of income tax
C	income taxed at Welsh rate of income tax
K	total allowances are less than total deductions
T	tax code includes other calculations to work the personal allowance, for example it has been reduced because estimated annual income is more than £100,000

NATIONAL INSURANCE CONTRIBUTIONS

NIC CLASS 1 CONTRIBUTIONS	2020/21		
	Ann ual	Mon thly	We ekly
Primary threshold (PT)	£9,500	£792	£183
Secondary threshold (ST)	£8,788	£732	£169
Upper earnings limit (UEL)	£50,000	£4,167	£962

	2020/21		
NIC CLASS 1 CONTRIBUTIONS	Ann ual	Mon thly	We ekly
Apprentice upper secondary threshold (AUST) for under 25s	£50,000	£4,167	£962
Upper secondary threshold (UST) for under 21s	£50,000	£4,167	£962
Employment allowance (per year, per employer)	£4,000		
Class 1 Primary contributions on earnings between PT & UEL	12%		
Class 1 Primary contributions on earnings above UEL	2%		
Class 1 Secondary contributions on earnings above ST where employee aged 21 or over and not an apprentice under the age of 25	13.8%		
Class 1 Secondary contributions on earnings between ST & AUST for apprentices under the age of 25	0%		
Class 1 Secondary contributions on earnings above AUST for apprentices under the age of 25	13.8%		
Class 1 Secondary contributions on earnings between ST & UST for employees under the age of 21	0%		
Class 1 Secondary contributions on earnings above UST for employees under the age of 21	13.8%		
Class 1A contributions	13.8%		

	2020/21
NIC CLASS 2 CONTRIBUTIONS	
Normal rate	£3.05 pw
Small profits threshold	£6,475 pa
NIC CLASS 4 CONTRIBUTIONS	
Annual lower profits limit (LPL)	£9,500
Annual upper profits limit (UPL)	£50,000
Percentage rate between LPL & UPL	9%
Percentage rate above UPL	2%

Syllabus area: Capital Gains

	2020/21
Annual exempt amount	£12,300
Gains falling within the remaining basic rate band	10%
Gains exceeding the basic rate band	20%
Basic rate band	£1 – £37,500

Syllabus area: Corporation tax

FY 2020

Tax rate	19%
Augmented profits limit for corporation tax payment dates – large companies	£1,500,000
Augmented profits limit for corporation tax payment dates – very large companies	£20,000,000

CAPITAL ALLOWANCES

First year allowances available

- 100% on new and unused zero emissions goods vehicles
- 100% on new and unused low emission cars ie electrically propelled or with CO₂ emissions of not more than 50 g/km
- 100% on electric vehicle charging points

Annual investment allowance

£200,000 pa of expenditure incurred by any business on certain plant and machinery from 1 January 2021.

Writing down allowances

18% pa in the main pool

PAYMENT DATES

Payment dates for corporation tax

Corporation tax	Nine months and one day after the end of an accounting period
Corporation tax by instalments – large companies	The 14 th day of months 7, 10, 13 and 16 counted from the start of a 12-month accounting period
Corporation tax by instalments – very large companies	The 14 th day of months 3, 6, 9 and 12 counted from the start of a 12-month accounting period

Syllabus area: Value Added Tax

VAT

Standard rate		20%
Reduced rate		5%
Annual registration limit	From 1 April 2017	£85,000
Deregistration limit	From 1 April 2017	£83,000
VAT fraction (standard rated)		1/6

Cash accounting	£
Turnover threshold to join scheme	1,350,000
Turnover threshold to leave scheme	1,600,000
Annual accounting	
Turnover threshold to join scheme	1,350,000
Turnover threshold to leave scheme	1,600,000

Flat rate scheme	
Annual taxable turnover limit (excluding VAT) to join scheme	150,000
Annual total income (including VAT) to leave scheme	230,000



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